FILE COPY

Office Supreme Court, U. S.
FILED
MAR 4 1935
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 537.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

VS.

INTER-MOUNTAIN LIFE INSURANCE COMPANY, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF OF AMICI CURIAE.

INDEX

Motion for Leave to File Brief As Amici Curiae .... a

Brief of Amici Curiae—

Opinion Below 1

Jurisdiction 1

Question Presented 1

Statutes and Regulations Involved 2

Statement 3

Summary of Argument 6

Argument—

I. The purpose of the reserve deduction 7

II. The reserve funds of the respondent held against its liability upon matured unsurrendered coupons meet the test laid down by the statute 13

A. The coupons are policy obligations 13

B. The coupons are contingent liabilities of the insurer 14

C. The coupons involve life insurance obligations which the company can prepare itself to meet only by the maintenance of reserves to which interest is credited at 3½ per cent 15

III. The coupon reserves also meet the technical test contended for by petitioner 17

IV. The contention of the petitioner finds no support either in the language of the Revenue Act or in the administrative interpretation thereof 22

V. There is a valid distinction between the coupons involved in this case and dividends upon participating policies 26

VI. The authorities sustain respondent's contention 28

VII. The sole decision adverse to respondent's contention is based upon a false assumption 31

Conclusion 32

TABLE OF CASES

Caha vs. U. S., 152 U. S. 211 22

Commissioner of Int. Revenue vs. Standard Life Ins. Co., 47 F. (2d) 218 28-29

Commissioner of Int. Revenue vs. Western Union Life Ins. Co., 61 F. (2d) 207 29

Commissioner of Int. Revenue vs. Great American Life Ins. Co., 70 F. (2d) 133 29

Continental Assurance Co. vs. U. S., 8 F. Supp. 474 .....28, 31, 32

Great So. Life Ins. Co. vs. Jones, 35 F. (2d) 122 ..18, 19

Maryland Cas. Co. vs. U. S., 251 U. S. 342 29

McCoach vs. Ins. Co. of North America, 244 U. S. 585 .....29, 30

Miller vs. Western Union Life Ins. Co., 106 Wash. 490, 180 Pac. 488 13

National Life Ins. Co. vs. U. S., 277 U. S. 508, 525 12

New York Life Ins. Co. vs. Edwards, 271 U. S. 109, 119 27

New York Life Ins. Co. vs. Edwards, 271 U. S. 109 .....29, 31

Pac. States Life Ins. Co. vs. Bryce, (C. C. A. 10) 67 F. (2d) 710 14

Reserve Loan Life Ins. Co. vs. Commissioner, 18 B. T. A. 359 ..... 25, 26
Standard Life Ins. Co. vs. Com. of Int. Revenue, 13 B. T. A. 13 28
U. S. vs. Boston Ins. Co., 269 U. S. 197 ..... 29, 30
Williams vs. Union Central Life Ins. Co., 291 U. S. 170 ..... 18, 26

STATUTES AND REGULATIONS

Act of October 3, 1913, C. 16, 38 Stat. 166, 171-173 7
Act of September 8, 1916, C. 463, 39 Stat. 756, 765 and 768 7
Article 681, Treasury Regulations 62 ..... 2, 23
Judicial Code, Section 240 (a) 1
Report of Senate Finance Committee on Revenue Act of 1932 12
Revenue Act of 1918, C. 18, 40 Stat. 1057, Sec. 234 (a) (10) 7
Revenue Act of 1921, C. 136, 42 Stat. 227, 261, Sec. 245 (a) (2) 2, 5, 11
Revenue Act of 1921, Sec. 244, 42 Stat. 227 7
Revenue Act of 1921, Sec. 245 (a) (8) 25
Revised Statutes of Utah, 1933, Title 43, C. 3, Secs. 4 and 12 2
Sec. 38, Corporation Excise Tax of Aug. 5, 1909, C. 6, 36 Stat. 11, 12 7

Supreme Court of the United States

OCTOBER TERM, 1934.

No. 537.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

VS.

INTER-MOUNTAIN LIFE INSURANCE COMPANY, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF OF AMICI CURIAE.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

Come now the undersigned, members of the bar of this court, and move for leave to file a brief in this cause as *amici curiae*, and in support thereof your movants state that they represent other life insurance companies who will be affected by the decision of the court herein and that your movants believe the presentation of their views of the cause may assist in the consideration of the issues involved.

THOMAS WATTERS, JR.,
EDWIN R. MORRISON.

BRIEF OF AMICI CURIAE.

OPINION BELOW.

The opinion of the circuit court of appeals is reported in 71 F. (2d) 962. The Board of Tax Appeals handed down no opinion.

JURISDICTION.

The jurisdiction of the court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. The charge of the circuit court of appeals was entered June 25, 1934. (Rec. p. 26.) By an order entered by justice of this court on September 21, 1934, the time for filing a petition for a writ of certiorari was extended for sixty days from and after September 25, 1934. (Rec. p. 27.) The petition for a writ of certiorari was filed November 22, 1934, and the writ was granted January 7, 1935. (Rec. p. 27.)

QUESTION PRESENTED.

Whether certain funds held by the respondent at the beginning and end of the taxable year 1922 against its obligations to policyholders under certain guaranteed premium reduction coupon policies, in respect of coupons theretofore matured and unsurrendered, constitute "re-

serve funds required by law'' within the meaning of Section 245 (a) (2) of the Revenue Act of 1921.

STATUTES AND REGULATIONS INVOLVED.

Section 245 (a) (2) of the Revenue Act of 1921, C. 136, 42 Stat. 227, 261; Article 681 of Treasury Regulations 62, as printed in the appendix to petitioner's brief; and Title 43, Chapter 3, Sections 4 and 12, Revised Statutes of Utah, 1933.

STATEMENT.

This case involves the federal income tax liability of the respondent life insurance company for the calendar year 1922, and arises out of the disallowance by the Commissioner of Internal Revenue of a deduction claimed by respondent under Section 245 (a) (2) of the Revenue Act of 1921 in respect of funds held by respondent at the beginning and end of said year to cover respondent's liability upon certain "guaranteed premium reduction coupons" attached to and forming parts of policies of life insurance theretofore issued by respondent and then in force. Upon redetermination of the deficiency of income tax for said year, proposed by the Commissioner of Internal Revenue and predicated, among other things, upon the disallowance of said deduction, the United States Board of Tax Appeals held that the deduction should have been allowed, and redetermined the deficiency accordingly. The decision of the Board of Tax Appeals was affirmed by the Circuit Court of Appeals, Tenth Circuit, on June 25, 1934.

The coupon policies of respondent outstanding and in force at the beginning and end of the taxable year 1922 were in the form commonly known and denominated as "Twenty Payment Life" policies. Each of such policies at the time of issuance thereof bore a sheet of nineteen coupons, one such coupon maturing on each of the first nineteen anniversaries of the policy. Each such coupon constitutes the promise and obligation of the respondent to pay to the owner of the policy to which such coupon is attached a specified amount of

money, provided all premiums previously due on the policy have been paid. (Rec. p. 14.)

The rights and options of a policyholder with respect to the coupons attached to his policy are not set forth in the coupons themselves but are contained in the policy to which the coupons pertain. Those rights and options are as follows:

(1) The matured unpaid coupons may be applied to the payment of premiums.

(2) The matured coupons may be left with the company to be improved with compound interest at the rate of 3½ per cent per annum, the whole amount of such matured coupons and interest thereon to be subject to withdrawal by the policyholder in cash at any time and in event of the death of the insured to be paid to the beneficiary in addition to the face amount of the policy as an additional death benefit.

(3) If the first fourteen coupons are left with the company to accumulate at interest as aforesaid, the company will at the request of the insured at the end of fifteen years from the date of the policy issue to the insured a paid-up policy in the full face amount of the policy. Or, to state it another way, the matured coupons may be used to reduce the premium-paying period of the policy.

(4) The matured coupons may be used by the policyholder at the end of the twentieth policy year to mature the policy as an endowment for a specified amount or to purchase certain paid-up additions to the face of the

policy. Such paid-up additions may be in the form of life insurance alone or life insurance combined with life annuities to the insured.

(5) The coupons as they mature, or within one month after the respective due dates thereof, may be used to purchase paid-up additions to the policy in the amounts shown on the reverse sides of the several coupons.

The coupons and accumulated interest thereon with which we are concerned in this case are those which at the beginning and at the end of the calendar year 1922 had matured, but which had not been either (a) surrendered by the policyholders for cash, or (b) surrendered by the policyholders to be applied upon premiums, or (c) utilized for the purchase of paid-up additions. With respect to the coupons involved in this case the policyholders remained free to choose any one of the several options granted under the provisions of the policies to which such coupons were attached.

In view of the aforesaid provisions of respondent's coupon policies, the question here to be determined is whether or not the funds held by respondent to cover its liability upon all such matured unsurrendered coupons at the beginning and end of the calendar year 1922 constituted "reserve funds required by law" within the meaning of Section 245 (a) (2) of the Revenue Act of 1921, so that respondent was entitled to deduct from gross income four per cent of the mean of such funds held at the beginning and end of said taxable year. It is conceded by the petitioner that the respondent was required by the laws of Utah to have on hand at all times assets at least equal in amount to its total liabilities including all matured, unsurrendered coupons, and that the respondent actually had and held such assets at the beginning and end of the year 1922. (Petitioner's Brief p. 22.)

SUMMARY OF ARGUMENT.

The purpose of the deduction provided by Section 245 (a) (2) of the Revenue Act of 1921 is to eliminate from the taxable income of life insurance companies that portion of the investment income of the companies which is required by virtue of their policy obligations to be added to reserve funds. This purpose evidenced by the clear legislative intent of the Congress in effect constitutes a test for "reserve funds" as that term is employed in the Revenue Act. The funds held by respondent against its liability upon matured and unsurrendered coupons meet the aforesaid test because they are policy obligations and are contingent liabilities of the company and involve life insurance obligations which the company can prepare itself to meet only by the maintenance of reserves which are continually increased by crediting thereto interest thereon at 3½ per cent. Although contesting the contention of the petitioner which attempts to lay down another test for reserve funds, nevertheless the coupon reserve here in question, in view of the obligations of the company under the terms and provisions of its policies, comply in every respect with the test contended for by petitioner. The position taken by the petitioner in this case is unsupported by the language of the Revenue Act and likewise by the history of the administrative interpretation thereof by the Treasury Department.

There is a valid distinction between the coupons involved in this case and dividends upon participating policies, and the decisions holding that declared dividends do not constitute reserve funds required by law within the meaning of the revenue acts have no applicability to the issues in this case. All of the decided cases upon this precise point are adverse to the contentions of the petitioner except one decision of the court of claims which for all of the reasons above stated is erroneous and should not be sustained.

ARGUMENT.

I.

The Purpose of the Reserve Deduction.

In the revenue acts prior to the Act of 1921 life insurance companies were required to include in gross income for federal income tax purposes their income from all sources, including premium or underwriting income as well as income from invested funds. Under such acts the companies were permitted a deduction from gross income in the amount of the "net addition, if any, required by law to be made within the year to reserve funds." Section 38 of the Corporation Excise Tax of August 5, 1909, C. 6, 36 Stat. 11, 12; Act of October 3, 1913, C. 16, 38 Stat. 166, 171-173; Act of September 8, 1916, C. 463, 39 Stat. 756, 765, 768; and Revenue Act of 1918, C. 18, 40 Stat. 1057, Section 234 (a) (10).

In the Revenue Act of 1921 and the succeeding acts, a new system of taxation of life insurance companies was prescribed. The Act of 1921 and subsequent acts require life insurance companies to return in gross income only their income from interest, rentals and dividends, that is to say, their investment income. Premium income is not required to be returned: Section 244, Revenue Act of 1921, 42 Stat. 227.

By reason of this change in the definition of gross income, the Act of 1921 and subsequent acts made certain changes in the deductions permitted to life insurance

companies. Since 1921 such companies have been permitted a deduction in the amount of 4 per cent of the mean of all "reserve funds required by law" and held at the beginning and end of the taxable year. A life insurance company is no longer permitted to take a deduction in the amount of net additions to reserve funds during the taxable year.

Neither in the acts prior to 1921 nor in the Act of 1921 and subsequent acts has the Congress defined the term "reserve funds" as used therein. In attempting to determine the legislative intent and to lay down a test by which it may be ascertained what constitutes reserve funds and what does not, it becomes pertinent to inquire why life insurance companies are allowed any deduction for or in respect of their reserve funds. The reason becomes apparent when one considers the inherent nature of the life insurance business, particularly in connection with the legal requirements to which life insurance companies are subjected by the laws of the various states. The company by virtue of its outstanding policy contracts and the obligations contained therein is required each year to increase its reserves by crediting thereto interest thereon at a specified rate (in this case 3½ per cent) and by adding thereto a portion of the premiums collected during the year. In other words, the sources from which the reserves of respondent are derived are (1) premiums and (2) earnings upon investments in which the reserve funds of the company are invested. It is obvious that so long as the revenue acts required the company to include all of its income in gross

income for tax purposes, premium income as well as investment income, it was necessary to permit the company to deduct from gross income the entire amount which it was required during the taxable year to take out of gross income and to set aside as a part of its reserve funds for the security of its policyholders. It would have been grossly unfair and would have tended to defeat the very purpose of the valuation statutes of the states requiring life insurance companies to have and maintain reserves if the tax had been levied upon the entire income of the company when, as a matter of fact, the company was not free to use all of that income as it saw fit, but was required by the laws of the state in which it was organized and did business to set aside a portion of such income as reserve funds for the security of policyholders. Such income so required to be set aside for the security of policyholders in legal effect belongs to the policyholders and is not fairly to be considered as income to the company for tax purposes.

When in the Act of 1921, life insurance companies were relieved of the requirement that they return premium income as a part of gross income for income tax purposes, it became apparent that the company was no longer entitled to a deduction in the full amount of the additions made to reserve funds during the taxable year, for the reason that a portion of such additions to reserves came out of premium income which was no longer taxed. It was equally apparent, however, that the company was still entitled to some deduction in respect of that portion of its taxable income which it was

required to set aside and credit to reserve funds for the security of its policyholders. The invested assets of a life insurance company from which its taxable income is derived are, generally speaking, the assets in which its reserve funds are invested, and the income from such investments constitutes the source of the interest which is required to be added to reserve funds. The Congress, therefore, provided in the 1921 Act that the company should be entitled to take a deduction from gross income for tax purposes in an amount approximately equal to the part or portion thereof which the company was required to credit or add to reserve funds in accordance with the rate of interest assumed by the company in order to provide funds with which to meet its policy obligations at maturity. A great many companies assume interest at 4 per cent. Other companies assume interest at 3½ per cent. As a matter of convenience and uniformity for income tax purposes, the Congress provided that life insurance companies should be entitled to deduct from their investment income an amount equal to 4 per cent of the mean of reserve funds required by law and held at the beginning and end of the taxable year.

The control which a life insurance company is permitted to exercise over reserve funds is strictly limited and circumscribed by the statutes of practically all states. Such funds can be invested by the company only in securities of the kind prescribed by statute. In many states the securities in which such funds are invested must be physically deposited with a designated deposi-

tary. In any event the company is required to maintain the funds intact and without impairment. To the extent that the earnings of such funds are required by law to be added to the principal of the funds, such earnings do not constitute income to the company in any true sense of the word. The purpose of the deduction allowed by Section 245 (a) (2) of the Act of 1921, therefore, is to relieve the company of the payment of income taxes upon such part of the income from invested reserve funds as is required by law to be added to the principal of such funds. To levy a tax upon the income from such funds might have the effect of impairing the funds themselves because the remaining income after payment of the tax would be insufficient to increase the funds at the rate assumed and required by law. Thus the Federal Income Tax Law would thwart the purpose of the state valuation statutes and might impair the obligations assumed by the company in its policy contracts.

It becomes apparent from this consideration of the theory of the revenue acts as applied to life insurance companies that the Congress intended that a life insurance company should be permitted to include as reserve funds for the purpose of computing its deduction under Section 245 (a) (2) of the Act of 1921, all of those funds which it holds to cover policy obligations to its policyholders and which it is required by virtue of its policy obligations to improve with interest in accordance with the method adopted by it for computing its reserves.

That this is the legislative intent is clearly indicated by the report of the Senate Finance Committee on the Revenue Act of 1932. A change was made in the 1932 Act in that the reserve deduction was decreased to 3¾ per cent of the mean, in respect of those reserves which are computed at an interest assumption rate lower than 4 per cent. In commenting upon this change the Senate Finance Committee said:

> "In view of the fact that by far the greater part of the reserves for life insurance policies are maintained at rates less than 4 per cent, the effect of the existing law was to permit companies maintaining their reserves at such lower rates to take deductions substantially in excess of their actual reserve requirements. * * *
>
> "In the judgment of your committee, the substantial purpose of the act, to permit a life insurance company to set aside free of tax the amount of investment income actually required to maintain the policy reserve, is best accomplished by requiring the deduction to be computed at the interest rate at which the policy reserves are actually maintained. Since few, if any, policy reserves are maintained at rates in excess of 4 per cent, the rate at which such deduction may be computed may not exceed 4 per cent. If a company maintains its reserves at different interest rates, the deduction must be computed by applying to each part of the reserve the rate at which such part is maintained."

The legislative intent and purpose evidenced by the above-quoted language of the finance committee is also recognized in the dissenting opinion of Mr. Justice Brandeis in *National Life Insurance Company* v. *United States*, 277 U. S. 508, 525.

II.

The Reserve Funds of the Respondent Held Against Its Liability upon Matured Unsurrendered Coupons Meet the Test Laid Down by the Statute.

A. THE COUPONS ARE POLICY OBLIGATIONS.

The coupons attached to respondent's coupon policies constitute an integral part of the life insurance contracts between the company and the policyholders. The full extent of the company's obligations and liabilities upon such coupons cannot be ascertained by reference to the coupons alone, but must be ascertained from the provisions of the policy contracts themselves. The coupons are neither negotiable nor separately transferable. They are payable in cash only to the insured or to the owner of the policy. If they are paid as an additional death benefit, they are payable only to the beneficiary of the policy. If they are utilized for the payment of premiums or for the purchase of paid-up additions to the policy, they are available only to the insured or owner of the policy. Under no theory can such coupons be said to constitute independent contracts between the insured and the insurer. They are not mere unrelated promises to pay money. They are as much a part of the contract between the company and the insured as any other part of the policy provisions. *Miller* v. *Western Union Life Ins. Co.*, 106 Wash. 490, 180 Pac. 488. The company cannot disregard the coupons in ascertaining the extent of the life insurance obligations it has assumed to the insured.

B. THE COUPONS ARE CONTINGENT LIABILITIES OF THE INSURER.

No life insurance obligation is contingent in the sense that it is indefinite *whether* the insurer will ever be called upon to pay. The event insured against is certain. A life insurance company knows that every policy it issues will some day become a death claim if the policy is kept in force, but it does not know the time nor the order in which such claims will accrue. Likewise the liability of the company on matured unsurrendered coupons is contingent. The time and method of payment of coupons rest solely in the choice of the policyholder, free of any control by the insurer. The company may be called upon to pay the amount of matured coupons and interest thereon in cash at any time prior to, or at the death of, the insured. It may be called upon to discharge its obligation upon matured coupons by issuing to the insured additional paid-up insurance in any one of several forms or combinations of forms. The time at which the company may be called upon to discharge its obligation upon such coupons and the method in which the company will be required to discharge such obligation are not susceptible of ascertainment prior to the exercise by the policyholder of the rights and options vested solely in him. The greatest possible liability of the insurer at any given time is definite, however, and it is this maximum liability which the company must keep itself in readiness to meet whenever the contingency over which it has no control occurs. See *Pacific States Life Ins. Co.* v. *Bryce*, (C. C. A. 10) 67 F. (2d) 710.

C. THE COUPONS INVOLVE LIFE INSURANCE OBLIGATIONS WHICH THE COMPANY CAN PREPARE ITSELF TO MEET ONLY BY THE MAINTENANCE OF RESERVES TO WHICH INTEREST IS CREDITED AT 3½ PER CENT.

A consideration of the options granted to the holder of a coupon policy at the end of the twentieth policy year demonstrates the correctness of respondent's theory of this case. It is provided in the body of the policy—not in the coupons—that, if all premiums have been paid in cash and if all coupons have been left with the company to accumulate at interest, the insured *shall* select one of four options given to him. All of these options involve life insurance in excess of the original face amount of the policy. For convenience we shall illustrate this proposition by referring specifically to the specimen coupon policy for $10,000.00, issued at age 35, appended to the agreed statement of facts in the Board of Tax Appeals as Exhibit A. (Rec. p. 11.) The court will take judicial notice of the American Experience Table of Mortality which with the interest assumption rate of 3½ per cent forms the reserve basis of respondent's coupon policies.

Option 1 (at the end of the twentieth policy year) provides that the policy will endow at said time for $8,000.00. (Rec. p. 11.) It is obvious that the policy exclusive of coupons could not possibly endow for any such sum at the twentieth year. Being based on the American Experience Table of Mortality, assuming interest at 3½ per cent, the policy would endow for the face amount at age 96 of the insured. The values in the policy which make the twentieth year endowment

for $8,000.00 possible are as follows: Reserve, exclusive of coupons, $5,660.00; and accumulated coupons and interest, $2,340.00. If interest is not credited to coupons at 3½ per cent, compounded from the respective due dates of the coupons, the company at the end of the twentieth policy year will find itself in the position of having agreed to pay the insured $8,000.00 without having sufficient funds on hand to make the payment. In this respect, therefore, the company must accumulate its reserves much more rapidly than upon a simple "Twenty Payment Life" policy without coupons.

Option 2 provides that the insured may demand a paid-up policy for life of $14,130.00. (Rec. p. 11.) The attained age of the insured at the end of the twentieth policy year is 55. The net single premium required to purchase $14,130.00 of paid-up insurance for life at age 55 is $7,999.70, based on the American Experience Table and assuming interest at 3½ per cent. The values contained in the coupon policy available to provide such net single premium are as follows: Reserve, exclusive of coupons, $5,660.00; accumulated coupons and interest, $2,340.00. (For convenience values are adjusted to the nearest dollar.) Again, in this option, the company must accumulate reserves more rapidly than upon a simple "Twenty Pay Life" policy or it will not have sufficient funds on hand to provide the additional insurance which it has agreed to give the insured at the end of the twentieth policy year. Furthermore, the company must credit interest to matured coupons at 3½ per cent or it will not have sufficient funds to meet

its life insurance obligation at the end of the twentieth policy year.

A similar analysis of each of the four twentieth year options might be made, and in each case the figures will demonstrate that the company has made a contract to insure the life of the insured, without the payment of additional premium, for amounts which make it mandatory upon the company to maintain reserves in excess of the reserve upon a simple "Twenty Pay Life" policy without coupons. This additional reserve is made up out of the matured coupons and interest thereon, and based on the American Experience Table with interest at 3½ per cent is the single premium necessary to provide the additional insurance provided by the policy. The principal of the coupons alone is not sufficient. A deficit exists unless interest is credited to matured coupons at 3½ per cent.

Therefore, inasmuch as the funds held by the company against its obligations to the policyholder upon matured coupons are required to be improved with interest in order to enable the company to meet its policy obligations at maturity, such funds necessarily constitute "reserve funds" within the meaning of the Revenue Act.

III.

The Coupon Reserves Also Meet the Technical Test Contended for by Petitioner.

An attempt has been made to cloak the coupon reserves which are involved in this case with such technicality that the real purpose of the deduction permitted

by Section 245 (a) (2) of the Revenue Act will be lost sight of. It is said that the liability of the company upon matured coupons is not a life insurance obligation. A complete answer to that contention is found in the provisions of the coupon policies themselves. The insured is entitled to have his additional paid-up life insurance merely by demanding it. No option or discretion concerning the matter is vested in the company. It has in legal effect insured the life of the insured for an amount in excess of the original face amount of the policy. The actual placing of the additional insurance in force awaits only the determination by the insured of the exact form of insurance he desires. The company is bound as effectively as if the additional insurance were put in force at the original issuance of the policy. That this is so has been recognized by this court in *Williams* v. *Union Central Life Insurance Company*, 291 U. S. 170. There the court was concerned with the nature of certain funds in the hands of the company and the duty of the company to employ those funds for the purpose of preventing lapse of the policy for nonpayment of premium. The result reached by this court would have had the possible effect of overruling the opinion of the court of appeals in *Great Southern Life Ins. Co.* v. *Jones*, 35 F. (2d) 122, had not the opinion of this court recognized and pointed out the important differences between dividends upon participating policies and coupons constituting part of nonparticipating policies. Thus it was pointed out in the opinion by Mr. Chief Justice Hughes that the guaranteed premium reduction coupons before the court in

that case were "fixed liabilities requiring a reserve, and were not dividends in the proper sense as in the instant case." There is no difference between the coupons involved in the *Great Southern Life Case, supra*, and those involved in this case, except in minor details.

It is said that the coupon reserves are not calculated upon the basis of a motality table and, therefore, do not constitute "reserve funds" within the meaning of that term as used in the revenue acts. It will be pointed out in a subsequent portion of this brief that such a test is not contemplated either by the Revenue Act or by the administrative interpretation placed on the act by the Secretary of the Treasury. But, even if such were the test, the coupon reserves meet it absolutely and unconditionally. It has been demonstrated that the coupons are designed with interest thereon at 3½ per cent to produce the fund necessary to enable the respondent to provide the paid-up life insurance additions which the insured by virtue of policy provisions is entitled to demand and receive at designated times. The amounts necessary to provide such paid-up life insurance additions are scientifically and actuarially determined, based upon the American Experience Table of Mortality, assuming interest at 3½ per cent. The amount of additional insurance for which the company has bound itself by policy contract is specific and definite. The age of the insured is known. The calculation of the net single premium required to provide such amount of additional paid-up life insurance is a distinctly actuarial function based upon the application of the mortality table and the interest assumption

rate. It is scientific and exact. How, then, can it be said that the amounts of the coupons, which, with their accumulated interest at the aforesaid assumed rate, are designed to produce such net single premium, are not actuarially determined?

It is also said that the policyholder may surrender his matured coupons for cash without surrendering his life insurance. This statement will not withstand analysis in the light of the provisions of the policy contract in evidence in this case. A policyholder who surrenders his matured coupons for cash has as effectually surrendered a part of his life insurance as if he had drawn down half of the surrender value of a noncoupon policy and had thereby reduced the amount of insurance in force by a corresponding amount. He has surrendered a policy which will be paid up for the face amount at the end of fifteen years, and he has in its place a policy which will be paid up for the face amount at the end of twenty years. He has surrendered a policy which will be paid up for $14,130.00 at the end of twenty years, and he has in its place a policy which will be paid up for only $10,000.00 at the end of twenty years. By surrender of his matured coupons for cash the policyholder has surrendered a life annuity of $174.40 beginning at the end of the twentieth policy year. In any event, even if petitioner's argument were sound, it involves the attempted application of a test for "reserve funds" which is entirely outside the provisions of the Revenue Act and the treasury regulations.

It is said that the coupon reserve is a mere "solvency reserve." The same thing might be said with equal truth of every reserve a life insurance company maintains. The reserve is an actuarial device by which the company, being manifestly unable to charge itself with a liability equal to the face amount of all outstanding policies, nevertheless charges itself at all times with such an amount of liability upon outstanding policies that by maintaining funds to cover such liability it can pay its policy obligations as they mature. Every reserve, therefore, is a part of the test of the solvency of the company. If it were not so the valuation statutes of the several states would be vain and useless. It may be conceded that the mere designation of a fund as a reserve is not sufficient to constitute the same a "reserve fund" within the meaning of the Revenue Act. But if the fund in question is one held and maintained by the company against an obligation or obligations assumed by it to policyholders under the terms and provisions of outstanding policies, and if it is necessary for the company to improve such fund by crediting thereto interest thereon in order to enable the company to accumulate the funds necessary to discharge such policy obligations as they mature, that fund meets the test for "reserve funds" contemplated by the Revenue Act and it also meets the hypertechnical test contended for by the petitioner. It is something more than a mere test of solvency. It is an inherent necessity of the insurance business, necessary for the purpose of providing funds with which to discharge policy obligations.

IV.

The Contention of the Petitioner Finds No Support Either in the Language of the Revenue Act Or in the Administrative Interpretation Thereof.

In the foregoing paragraphs of this brief we have presented reasons and arguments which we believe establish the unsoundness upon principle and in theory of the arguments advanced by the petitioner in this case. Entirely aside from the soundness or fallacy of petitioner's arguments, however, is the practical consideration that petitioner attempts to lay down a test for "reserve funds" which finds no support either in the revenue acts or in the administrative interpretation thereof by the Treasury Department. Neither the revenue acts nor the treasury regulations have ever limited or circumscribed the definition of the term "reserve funds" in the manner or to the extent contended for by the petitioner in this case. The court will take judicial notice of the income tax regulations promulgated by the Secretary of the Treasury pursuant to authority of law and of the official income tax return forms prescribed by said regulations for the use of life insurance companies. *Caha* v. *United States*, 152 U. S. 211. Article 681 of Regulations 62 is printed in the appendix to petitioner's brief. (pp. 44, 45.) Nowhere in the regulations is it required that reserve funds of life insurance companies include only such funds as are held against the contingency of death. On the contrary, the regulations expressly recognize that life insurance companies maintain reserve funds against policy obligations other than those containing life contingencies. Thus Article 681 of Regulations 62 provides,

"* * * Generally speaking, the following will be considered reserves as contemplated by the law: Items 7, 8, 9, 10 and 11 of the annual statement for life companies, * * *."

Items 7, 8, 9, 10 and 11 of the annual statement (convention edition) of life companies are as follows:

7. Net reserve (paid-up basis).
8. Extra reserve for total and permanent disability benefits; and for additional accidental death benefits included in life policies.
9. Present value of amounts not yet due on supplementary contracts *not* involving life contingencies.
10. Present value of amounts incurred but not yet due for total and permanent disability benefits.
11. Liability on policies cancelled and not included in "net reserve" upon which a surrender value may be demanded.

United States Internal Revenue Form 1120L, prescribed by Regulations 62 as the official form for use by life insurance companies in making their corporation income tax returns for the calendar year 1921, provide a Schedule C upon which the companies are required to itemize the reserve funds which they have included in the computation of the deduction allowed by Section 245 (a) (2) of the Act of 1921, as follows:

1. Reserve for outstanding policies and annuities.
2. Reserve for disability and accidental death benefits.
3. Reserve for supplementary contracts.
4. Reserve for incurred disability benefits.

5. Reserve for policies upon which a surrender value may be determined (not included elsewhere).
6. Deposits made with state officers by assessment companies, as required by law.
7. Other reserve funds, if any (attach itemized statement).

The above-quoted language from Regulations 62 survive the treasury regulations today and has been incorporated in all regulations promulgated since 1921. The official return form today contains the same items in Schedule C as are set out above, as have all return forms prescribed for life insurance companies since 1921. Such a consistent history of administrative interpretation of the revenue acts during a period in which the Congress has time and again reenacted Section 245 (a) (2) of the 1921 Act without change places beyond doubt the conclusion that the Congress intended that the term "reserve funds" as used in the act is not to be limited to those funds held against the contingency of death, but includes all funds held against any and all policy obligations of a life insurance company if the company in order to fulfill its policy obligations is required to improve such funds with interest at the rate assumed by the company as a part of its reserve basis. If the Congress had not been satisfied with the interpretation placed upon the act by the Treasury Department, or, if the Congress had intended to include in "reserve funds" only those funds held against the contingency of death, it undoubtedly would have changed the law so to provide.

Petitioner attempts to avoid the force of this argument by directing attention to Section 245 (a) (8) of the Revenue Act of 1921, which grants to the taxpayer life insurance company a deduction from gross income in the amount of interest paid or accrued on indebtedness. The deduction for interest paid granted by Section 245 (a) (8) of the Revenue Act of 1921 is limited fo interest upon the *indebtedness* of the company. It does not include interest credited upon the reserves of the company, nor does it include the amount of interest which may be included in the payment of a policy obligation through application of the reserve to such payment—the very purpose for which the reserve is accumulated. Every death claim is paid at least in part out of the reserve upon the policy. Every payment of the cash surrender value of a policy is a payment of or out of the reserve. Each such payment to the extent that it constitutes a payment of or out of the reserve constitutes a payment of interest theretofore credited to the reserve. But it is the payment of a policy obligation and not the payment of an indebtedness of the company, and the interest so paid is therefore not deductible under Section 245 (a) (8) of the Act. This has been clearly held by the Board of Tax Appeals in *Reserve Loan Life Insurance Company* v. *Commissioner*, 18 B. T. A. 359, where it is said in the opinion at pages 368-9:

> "As pointed out in *Standard Life Insurance Co. of America, supra*, the payment of the face of a matured coupon, together with the interest thereon, constitutes the paying off by the company of a policy obligation and the surrender by the policyholder of

a part of his policy. This being true, the amounts paid or credited by the petitioner (company) during the respective years to holders of coupon policies do not, in our opinion, constitute interest paid or accrued on indebtedness within the meaning of Section 245 (a) (8) of the applicable Revenue Acts."

We do not in any sense abandon our contention that the funds held by respondent against matured unsurrendered coupons constitute "reserve funds" even within the restricted definition of that term contended for by the petitioner. It is submitted, however, that the entire argument upon which petitioner bases his case is beside the point and entirely immaterial because it is founded upon an assumption which finds no support in the Revenue Act and is squarely in conflict with the interpretation placed upon the act by the Treasury Department from the very beginning.

V.

There Is a Valid Distinction Between the Coupons Involved in This Case and Dividends upon Participating Policies.

Petitioner argues that there is no real distinction in principle, in so far as the reserve question is concerned, between a dividend upon a participating policy and a coupon of the type here involved. This argument is somewhat amazing in the light of the clear statement of the nature of dividends in the opinion by Mr. Chief Justice Hughes in *Williams* v. *Union Central Life Ins. Co.*, *supra*. It is there said on page 177,

> "'Dividends' are in a different category. In fixing the annual level premium, there is added to the

> sum required on the basis of the mortality table, and assumed rate of interest, an amount to cover anticipated expenses and contingencies. If the rate of mortality exactly coincided with the expected rate, and the income, expenses and contingencies were precisely in accordance with the allowance made therefor, there would be no surplus and hence no dividends. But in the actual course of business there may be, and probably will be, gains from the fact that the mortality turns out to be less than that expected, or that the income is larger or the outlays are less than those estimated, and these gains are distributable to policyholders by means of 'dividends' in accordance with the provisions of policies. The 'surrender value' is calculated on the basis of the reserve and without reference to such possible dividends."

The differences existing between dividends and coupons are obvious. Their sources are different. Dividends are not "something reserved from premiums to meet policy obligations at maturity." See, *New York Life Ins. Co.* v. *Edwards*, 271 U. S. 109, 119. Dividends are *earned* by the company through mortality savings, excess interest earnings and careful, economical management. Coupons, on the other hand, are "something reserved from premiums." Otherwise the company could not definitely obligate itself upon the coupons at the time of issue of the policies. Dividends are not fixed and definite policy obligations. The participating company makes no agreement to pay definite amounts of dividends when the policy is issued. Dividends grow out of the corporation-stockholder relationship rather than out of the insurer-insured relationship. Participating policies upon which dividends *may* be paid, if earned, do not, and cannot, obligate the company at the date of issue of the

policy for any specified amount of life insurance in addition to the original face amount of the policy. On the other hand the nonparticipating coupon policy obligates the company with respect to additional insurance from the moment the policy is issued. The company must keep itself in position to meet those definite policy obligations, and the funds with which it keeps itself in such position are "reserved from premiums" and are not contingent upon the company's earnings. The holder of a coupon policy is in precisely the same position as if he had received a policy containing two schedules of premiums and providing that if the larger amount of premiums be paid there shall be so much insurance in force but if the smaller amount of premiums be paid there shall be so much less insurance in force or the premium-paying period for the same amount of insurance will be larger. The holder of such a policy who pays the larger amount of premiums is in comparable position to the holder of a coupon policy who leaves his coupons with the company to accumulate at interest.

VI.

The Authorities Sustain Respondent's Contention.

Aside from the decision of the court of claims in *Continental Assurance Co.* v. *United States,* 8 Fed. Supp. 474, all of the income tax cases involving the precise point here at issue have been decided adversely to petitioner's contention. The first such case was *Standard Life Insurance Co.* v. *Commissioner of Internal Revenue,* 13 B. T. A. 13, later affirmed by the Circuit Court of Appeals, Third Circuit, in *Commissioner of*

Internal Revenue v. *Standard Life Insurance Co.*, 47 F. (2d) 218. Since that time the point has been before the Board of Tax Appeals many times and its decisions have been consistently adverse to the government. The Circuit Courts of Appeals for the Ninth Circuit and Tenth Circuit have reviewed decisions of the Board of Tax Appeals in such cases and have sustained the decisions of the board. *Commissioner of Internal Revenue* v. *Western Union Life Insurance Company*, 61 F. (2d) 207; *Commissioner of Internal Revenue* v. *Great American Life Insurance Company*, 70 F. (2d) 133; and the opinion of the court of appeals in the case at bar, 71 F. (2d) 962.

In view of this state of the authorities, the petitioner relies upon the decisions of this court in *McCoach* v. *Insurance Co. of North America*, 244 U. S. 585; *Maryland Casualty Co.* v. *United States*, 251 U. S. 342; *United States* v. *Boston Insurance Co.*, 269 U. S. 197; and *New York Life Insurance Co.* v. *Edwards*, 271 U. S. 109.

Three of the above cases involve fire, marine or casualty insurance companies. *New York Life Ins. Co.* v. *Edwards, supra*, is a life insurance company case. All of the four cases involve reserve funds variously designated as "unpaid loss reserve," "loss claims reserve" or "reserve against accrued and unpaid losses." All of the four cases arose under revenues acts prior to the Revenue Act of 1921. In considering the bearing of those cases upon the case at bar one must refer back to the provisions of the acts prior to the 1921 Act. Gross income under the prior acts included premium income as well as investment income; the reserve deduction was

the amount of net additions to reserve funds; and an additional deduction was allowed for all losses actually sustained within the year and not compensated by insurance or otherwise. Since the elimination of premium income from gross income, the loss deduction is no longer allowed for obvious reasons. In the fact that the acts, under which the four cases, *supra*, arose, permitted the companies to deduct from gross income the amount of all losses sustained during the year lies the real ground for the result in those cases. That is the ground upon which the *McCoach* case was decided as is clearly shown by the following quotation from the opinion of Mr. Justice Pitney in that case:

> "There is a specific provision for deducting 'all losses actually sustained within the year and not compensated by insurance or otherwise.' And this is a sufficient indication that losses in immediate contemplation, but not as yet actually sustained, were not intended to be treated as part of the reserve funds; that term rather having reference to the funds ordinarily held as against the contingent liability on outstanding policies."

The *Boston Insurance Co.* case and the *New York Life* case are bottomed upon the *McCoach* case and their actual holdings go no further than the *McCoach* case. The unpaid loss reserves under consideration in those cases do not comply with the test which we have heretofore laid down for the determination of "reserve funds." They are not funds which the company is required to improve with interest and they are not "something reserved from premiums."

In the earnestness of their desire to find in these decisions of this court some aid for their contention in the

coupon cases, counsel for the petitioner have read into the language of the court in *New York Life Ins. Co.* v. *Edwards, supra,* a limited definition of the term "policy obligations" which the court did not and could not have intended because no such matter was before it for decision. The court well knew when that case was decided that life insurance companies assume many policy obligations which are not mortality obligations. That fact was also well known to the Congress when it enacted the various revenue acts. If there had been any desire upon the part of the Congress to limit the reserve funds of life companies to those funds held against life risk, such a provision would have been easy and simple to state. If the court had desired in *New York Life* v. *Edwards* to lay down the rule that the reserves of a life company consist only of those reserves held against mortality obligations, it would have employed specific rather than general language. There is no reasonable basis for imputing to the Congress or to the court an intention to use a general term in a restricted sense. That consideration becomes academic, however, so far as the coupons involved in the case at bar are concerned. The coupons are within the scope of the restricted terms which the petitioner would have us believe were intended by the Congress and by this court.

VII.

The Sole Decision Adverse to Respondent's Contention Is Based upon a False Assumption.

The court of claims in *Continental Assurance Co.* v. *United States,* 8 Fed. Supp. 474, approached the case

under a misconception of the fundamental theory and purpose of the reserve deduction provided by Section 245 (a) (2) of the Revenue Act of 1921. The court overlooked the fact that such deduction was granted for the purpose of eliminating from the taxable income of the company that portion of its investment income which it was required by virtue of its policy contracts to add to reserves for the protection of policyholders. For reasons heretofore stated in this brief we respectfully submit that the court of claims fell into error in the following respects: (1) it adopted a test for reserve funds for which there is no basis in the Revenue Act; (2) it misconceived the actuarial and legal effect of the coupon policy form involved in that case, and, therefore, erroneously concluded that the coupon reserve did not meet the requirements of the false test which it adopted; (3) it erroneously concluded that the funds held by the company against its liability upon matured coupons were not "reserve funds required by law" because they were not reported on line 7 or above of the liability page of the company's annual statement. Further comment upon the *Continental Assurance Co. Case, supra,* would involve needless repetition of the arguments heretofore presented herein. We believe that the decisions of the courts of appeals which have passed on this question have reached the correct result and should be sustained.

Conclusion.

In conclusion we respectfully submit that although the amount of tax involved in the case at bar is small, the

question at issue is important to a great many life insurance companies and involves in the aggregate a large sum of money. For these reasons we have desired to present to the court our views upon the various questions involved in this controversy, and we respectfully submit that the conclusion reached by the circuit court of appeals in this case is correct and should be affirmed.

Respectfully submitted,

THOMAS WATTERS, JR.,
EDWIN R. MORRISON.

SUPREME COURT OF THE UNITED STATES.

No. 537.—October Term, 1934.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner, *vs.* Inter-Mountain Life Insurance Company. | On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[April 1, 1935.]

Mr. Justice Butler delivered the opinion of the Court.

The question for decision is whether assets held by the company in 1922 against matured and unpaid coupons attached to 20-payment life coupon nonparticipating policies constituted a reserve fund required by law within the meaning of § 245 (a) (2) of the Revenue Act of 1921.[1]

That section declares that net income means gross income less, among other permissible deductions, an amount equal to four per cent. of the mean of the "reserve funds required by law" held at the beginning and end of the taxable year. Respondent, a stock company, incorporated under Utah law and commenced business in 1911. The laws of that State require, as a condition of doing life insurance business, that the assets of the company shall equal or exceed all liabilities for losses reported, expenses, taxes and other outstanding liabilities including the legal reserves. And they prescribe the rate of interest to be assumed and the mortality table to be used for the purpose of making valuations of life insurance policies and determining the reserves required to be maintained.[2]

[1] "Sec. 245. (a) That in the case of a life insurance company the term 'net income' means the gross income less— . . . (2) An amount equal to the excess, if any, over the deduction specified in paragraph (1) of this subdivision, of 4 per centum of the mean of the reserve funds required by law and held at the beginning and end of the taxable year . . ." 42 Stat. 261.

[2] Revised Statutes of Utah, 1933, Title 43, c. 3, § 4. "No stock company shall do any insurance business in this state before its capital is fully paid up. Said capital must be unimpaired, that is, the assets of such com-

The record contains a specimen policy for $10,000 applicable to age 35 issued in consideration of 20 annual premiums of $420.90. Attached are 19 coupons maturing serially on anniversary dates of the policy beginning with the first and ending with the nineteenth. Each coupon is a promise that at its maturity the company will pay the amount specified to the owner of the policy.

The policy states: The company will credit insured the face amount of any matured coupon as it becomes due and pay compound interest thereon, thereby creating a fund to the credit of the insured which may be applied to the payment of premiums or at any time withdrawn in cash; and, if not so applied or withdrawn prior to his death, it will pay the coupon values with interest to date of death to the beneficiary in addition to the face amount of the policy. The insured during the first year or within a month after the due date of the second annual premium may elect to convert the coupons as they mature into paid-up life additions to the policy which are only reconvertible into cash surrender value.

At the end of 20 years if all premiums have been paid in cash and if the amount of each matured coupon has been left with the company to accumulate at interest, then upon surrender of the policy and all coupons the insured shall select one of the following options: A guaranteed cash payment of $8,000; a paid-up policy for $14,130, subject to insurability; a guaranteed annual income of $490 for at least 20 years and as many more as the insured shall survive; a paid-up policy for $10,000 and an annual income of $174.40 during life. At the end of 15 years the company will issue a fully paid-up policy of $10,000 upon surrender of the original policy and the first 14 coupons representing values left on deposit at compound interest.

The mean of the company's reserve funds in 1922 set up against liabilities other than matured coupons was $942,751.40. Later

---

pany must equal or exceed all liabilities for losses reported, expenses, taxes and other outstanding liabilities, including the legal reserves as provided in sections 43-3-12 . . .'' § 12. ''For the purpose of making valuations of life insurance policies and of determining the reserves required to be maintained therefor under the provisions of this title the rate of interest assumed shall be 3½ percent per annum, and the rate of mortality shall be established by the table known as the 'American Experience Table of Mortality' for policies issued after January 1, 1910 . . .''

herein these are referred to collectively as "insurance reserves". The company claimed and the commissioner allowed as a deduction four per cent. of that amount. It carried a separate reserve against matured, unsurrendered and unpaid coupons, the mean of which in that year was $136,523.39. In its return the company deducted four per cent. of that amount but the commissioner disallowed the item. The Board of Tax Appeals, in harmony with its prior constructions of the clause in question,[3] held the coupon reserve deductible. It was sustained by the court, following cases in that and other Circuit Courts of Appeals.[4] 71 F. (2d) 962. That being in conflict with a recent decision of the Court of Claims,[5] this court granted a writ of certiorari. 293 U. S. —.

In the reserves required by the laws of Utah and of the other States in which the company issues policies of the described class, there is included an amount sufficient to cover not only all elements of insurance but also the coupon liability. We are not here dealing with reserves in relation to solvency of the company. The thing to be ascertained is the meaning that Congress intended by the language "4 per centum of the mean of the reserve funds required by law". The clause to be construed relates exclusively to life insurance companies. It is intended to define a deduction which they are permitted to make in the calculation of the net amount to be taxed. The rule that ambiguities in statutes imposing taxes are to be resolved in favor of taxpayers does not apply. Deductions are allowed only when plainly authorized. *Ilfeld Co.* v. *Hernandez*, 292 U. S. 62, 66. *New Colonial Co.* v. *Helvering*, 292 U. S. 435, 440.

The word "reserve" has many meanings. Accounts creating reserves are set up in almost every line of business and funds

[3] Standard Life Insurance Co. of America, 13 B. T. A. 13. Reserve Loan Life Insurance Co., 18 B. T. A. 359. Farmers Life Insurance Co., 27 B. T. A. 423. Missouri State Life Insurance Co., 29 B. T. A. 401. Atlas Life Insurance Co., 29 B. T. A. 750.

[4] Commissioner v. Standard Life Ins. Co. of America (C. C. A.-3) 47 F. (2d) 218. Commissioner v. Western Union Life Ins. Co. (C. C. A.-9) 61 F. (2d) 207. Commissioner v. Great American Life Ins. Co. (C. C. A.-10) 70 F. (2d) 133.

[5] Continental Assur. Co. v. United States, 8 F. Supp. 474. Cf. Minnesota Mutual Life Ins. Co. v. United States, 66 C. Cls. 481. Massachusetts Mutual Life Ins. Co. v. United States, 56 F. (2d) 897.

evidenced by the book entries are held for many and widely different purposes. As the Act does not permit corporations other than insurance companies to make deductions of the kind here under consideration, "reserve funds" may not reasonably be deemed to include values that do not directly pertain to insurance. In life insurance the reserve means the amount, accumulated by the company out of premium payments, which is attributable to and represents the value of the life insurance elements of the policy contracts. The premiums include enough, over and above what is needed to maintain proper insurance reserves, to provide for the discharge of coupon liability according to the terms of the policy. The coupon values are the equivalent of cash and may be used to pay premiums on the face amount of the policy, to procure additional insurance, to lessen the number of annual premiums or otherwise to obtain insurance protection. The amounts so applied cease to exist as coupon liabilities and automatically become a part of the life insurance reserves. These differ essentially from coupon liability. Life insurance matures only upon the death of the insured and the life reserve is based upon that contingency, whereas liability on the matured coupons depends upon no contingency. It follows that the insurance reserves alone constitute the base on which the deduction is to be computed. Reserves against matured coupons are excluded. *McCoach* v. *Insurance Co. of N. Amer.*, 244 U. S. 585, 589. *United States* v. *Boston Insurance Co.*, 269 U. S. 197, 202. *New York Ins. Co.* v. *Edwards*, 271 U. S. 109, 119. *Duffy* v. *Mutual Benefit Co.*, 272 U. S. 613, 618-619. *Continental Assur. Co.* v. *United States*, 8 F. Supp. 474.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.